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| 10/666,227 | 09/18/2003 | Colleen Poerner | 2002P15657US01 | 8462 |

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| EXAMINER |
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TERMANINI, SAMIR

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 2178

The Affidavit under 37 CFR 1.132 filed 10/31/2007 was carefully considered by the examiner.¹ However, it is insufficient to overcome the rejection of claims 1-40 based upon 35 U.S.C. §103(a) *Kodosky et al.* (U.S. PG-Pub. 2003/0184580) in view of *Leshem et al.* (U.S. Pat. No. 5,870,559) as set forth in the outstanding Office Action because, weighed against the evidence supporting the prima facie rejections, it fails to provide outweighing objective evidence. See MPEP § 716.

Objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes evidence of unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See, for example, *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984)

The evidence of the Affidavit consists substantially of statements expressing that: (1) one of ordinary skill in the art would not find the assertions of the Previous Office Action to be true; and (2) that one of ordinary skill art would not understand the cited references' disclosures.

The evidence of the Affidavit as not provided any objective evidence of secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, or skepticism of experts.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

¹ All of the competent rebuttal evidence taken as a whole should be weighed against the evidence supporting the prima facie case. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

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As an initial matter, Applicant remarks (9/10/2008) on page 16 that, "No evidence whatsoever cannot outweigh the evidence of the Declaration." This language is particularly confusing for the reason that Applicant's position by their Remarks, is contrary to this statement.

Applicant offers an Affidavit pursuant to 37 C.F.R. 1.132 by Colleen Guy in an attempt to "...provid[e] persuasive evidence that the prior Office Action does not present a *prima facie* rejection of any of claims 1-40..." (pg. 18 of Remarks filed 9/10/2008). The Affidavit attempts to do this by pointing to specific passages the Examiner relied on in making the rejections (See e.g., Affidavit, paragraphs 14, 19, and 21), then by referencing a definition in the Applicant's Specification (See e.g., paragraphs 16 and 18), followed by a conclusory statement of what one of ordinary skill in the art would have noted, considered, or found. Furthermore, in each instance, Affiant uses a Red Herring fallacy, through which a portion of the cited reference is presented and an opinion drawn without any reasoned explanation thereof.

For example, Colleen Guy's assertion (see Affidavit, paragraph 20), that *Kodosky* fails to teach *a linked hierarchically organized plurality of HMI screen nodes*, is unsupported by corroborating evidence nor by a reasoned explanation. The closest reasoning affiant provided appears in paragraph 19, where Affiant merely quotes language from (para. 1) of the cited reference and then concludes that said language would not have been found to teach the claimed invention. Without more, affiant fails to explain the basis for the opinion in anything but a conclusory statement. Therefore, Affiant's testimony is entitled to little, if any, weight. *Rohm and Haas Co. v. Biotech*

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Corp., 127 F.3d 1089, 1092 (Fed. Cir. 1997) (nothing in the rules or in jurisprudence requires the fact finder to credit unsupported or conclusory assertions); *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965) (argument in the brief does not take the place of evidence of record).

Even if weight is given to the statement in paragraph 20, the evidence of record, as a whole, suggests to the contrary,

This allows the viewer to easily view and understand what devices are present in the distributed system. In one embodiment, information may be displayed proximate to various device icons to indicate information about the device, such as type of device, geographic location of the device, calibration information, etc.

(Para. [0158]). See also,

Thus the configuration diagram may display an iconic relationship view of the various programs present within the system. The iconic relationship view may comprise an object-oriented view, a hierarchy view...

(Para. [0012]).

In addressing Colleen Guy's assertions in paragraphs 22-23, the examiner finds these conclusions too are unsupported by corroborating evidence nor by a reasoned explanation as to why paragraphs [0375] are deficient in teaching the claimed limitations. Affiant only offers a conclusory statement.

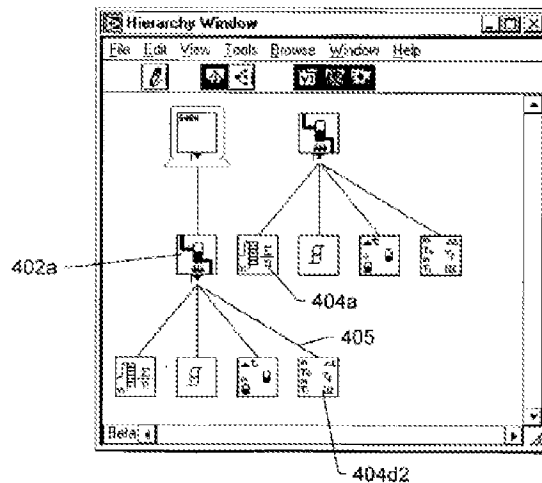
Even if weight is given to the statement in paragraph 22, the evidence of record suggests to the contrary,

The device icons preferably have an appearance which corresponds to the device they represent.

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In addressing Colleen Guy's assertions in paragraphs 25-26, the examiner finds that these conclusions too are unsupported by corroborating evidence nor by a reasoned explanation as to why the cited portions are deficient in teaching the claimed limitations.

Even if weight is given to the statement in paragraphs 25-26, the evidence of record suggests to the contrary, see figure 17 below,



The remainder of Applicants arguments with respect to the affidavit are deficient as unsupported by corroborating evidence nor by a reasoned explanation as to why the cited portions are deficient in teaching the claimed limitations.

The remainder of Applicants arguments with respect to the rejections rely on the aforementioned affidavit and are addressed by the above response, in addition to the treatment in the 7/10/2008 Final Office Action.